

SECOND REGULAR SESSION
[P E R F E C T E D]
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 1185
94TH GENERAL ASSEMBLY

Reported from the Committee on the Judiciary and Civil and Criminal Jurisprudence, March 13, 2008, with recommendation that the Senate Committee Substitute do pass and be placed on the Consent Calendar.

Senate Committee Substitute adopted April 2, 2008.

Taken up April 2, 2008. Read 3rd time and placed upon its final passage; bill passed.

TERRY L. SPIELER, Secretary.

5288S.02P

AN ACT

To repeal sections 229.110, 302.311, 302.750, 550.050, 550.070, 550.080, 550.090, and 577.041, RSMo, and to enact in lieu thereof three new sections relating to prosecutors, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 229.110, 302.311, 302.750, 550.050, 550.070, 550.080,
2 550.090, and 577.041, RSMo, are repealed and three new sections enacted in lieu
3 thereof, to be known as sections 302.311, 302.750, and 577.041, to read as follows:
302.311. In the event an application for a license is denied or withheld,
2 or in the event that a license is suspended or revoked by the director, the
3 applicant or licensee so aggrieved may appeal to the circuit court of the county
4 of his residence in the manner provided by chapter 536, RSMo, for the review of
5 administrative decisions at any time within thirty days after notice that a license
6 is denied or withheld or that a license is suspended or revoked. Upon such
7 appeal the cause shall be heard de novo and the circuit court may order the
8 director to grant such license, sustain the suspension or revocation by the
9 director, set aside or modify the same, or revoke such license. Appeals from the
10 judgment of the circuit court may be taken as in civil cases. [The prosecuting
11 attorney of the county where such appeal is taken, shall appear in behalf of the
12 director, and prosecute or defend, as the case may require.]

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

302.750. 1. If a person refuses, upon the request of a law enforcement officer pursuant to section 302.745, to submit to any test allowed under that section, then none shall be given and evidence of the refusal shall be admissible in any proceeding to determine whether a person was operating a commercial motor vehicle while under the influence of alcohol or controlled substances. In this event, the officer shall make a sworn report to the director that he requested a test pursuant to section 302.745 and that the person refused to submit to such testing.

2. A person requested to submit to a test as provided by section 302.745 shall be warned by the law enforcement officer requesting the test that a refusal to submit to the test will result in that person being immediately placed out of service for a period of twenty-four hours and being disqualified from operating a commercial motor vehicle for a period of not less than one year if for a first refusal to submit to the test and for life if for a second or subsequent refusal to submit to the test. The director may issue rules and regulations, in accordance with guidelines established by the secretary, under which a disqualification for life under this section may be reduced to a period of not less than ten years.

3. Upon receipt of the sworn report of a law enforcement officer submitted under subsection 1 of this section, the director shall disqualify the driver from operating a commercial motor vehicle.

4. If a person has been disqualified from operating a commercial motor vehicle because of his refusal to submit to a chemical test, he may request a hearing before a court of record in the county in which the request was made. Upon his request, the clerk of the court shall notify the [prosecuting attorney of the county] **director** and the [prosecutor] **director** shall appear at the hearing on behalf of the officer. At the hearing the judge shall determine only:

(1) Whether or not the law enforcement officer had reasonable grounds to believe that the person was driving a commercial motor vehicle with any amount of alcohol in his system;

(2) Whether or not the person refused to submit to the test.

5. If the judge determines any issues not to be in the affirmative, he shall order the director to reinstate the privilege to operate a commercial motor vehicle.

6. Requests for review as herein provided shall go to the head of the docket of the court wherein filed.

577.041. 1. If a person under arrest, or who has been stopped pursuant

2 to subdivision (2) or (3) of subsection 1 of section 577.020, refuses upon the
3 request of the officer to submit to any test allowed pursuant to section 577.020,
4 then none shall be given and evidence of the refusal shall be admissible in a
5 proceeding pursuant to section 565.024, 565.060, or 565.082, RSMo, or section
6 577.010 or 577.012. The request of the officer shall include the reasons of the
7 officer for requesting the person to submit to a test and also shall inform the
8 person that evidence of refusal to take the test may be used against such person
9 and that the person's license shall be immediately revoked upon refusal to take
10 the test. If a person when requested to submit to any test allowed pursuant to
11 section 577.020 requests to speak to an attorney, the person shall be granted
12 twenty minutes in which to attempt to contact an attorney. If upon the
13 completion of the twenty-minute period the person continues to refuse to submit
14 to any test, it shall be deemed a refusal. In this event, the officer shall, on behalf
15 of the director of revenue, serve the notice of license revocation personally upon
16 the person and shall take possession of any license to operate a motor vehicle
17 issued by this state which is held by that person. The officer shall issue a
18 temporary permit, on behalf of the director of revenue, which is valid for fifteen
19 days and shall also give the person a notice of such person's right to file a
20 petition for review to contest the license revocation.

21 2. The officer shall make a certified report under penalties of perjury for
22 making a false statement to a public official. The report shall be forwarded to the
23 director of revenue and shall include the following:

24 (1) That the officer has:

25 (a) Reasonable grounds to believe that the arrested person was driving a
26 motor vehicle while in an intoxicated or drugged condition; or

27 (b) Reasonable grounds to believe that the person stopped, being under
28 the age of twenty-one years, was driving a motor vehicle with a blood alcohol
29 content of two-hundredths of one percent or more by weight; or

30 (c) Reasonable grounds to believe that the person stopped, being under the
31 age of twenty-one years, was committing a violation of the traffic laws of the
32 state, or political subdivision of the state, and such officer has reasonable grounds
33 to believe, after making such stop, that the person had a blood alcohol content of
34 two-hundredths of one percent or greater;

35 (2) That the person refused to submit to a chemical test;

36 (3) Whether the officer secured the license to operate a motor vehicle of
37 the person;

38 (4) Whether the officer issued a fifteen-day temporary permit;

39 (5) Copies of the notice of revocation, the fifteen-day temporary permit
40 and the notice of the right to file a petition for review, which notices and permit
41 may be combined in one document; and

42 (6) Any license to operate a motor vehicle which the officer has taken into
43 possession.

44 3. Upon receipt of the officer's report, the director shall revoke the license
45 of the person refusing to take the test for a period of one year; or if the person is
46 a nonresident, such person's operating permit or privilege shall be revoked for one
47 year; or if the person is a resident without a license or permit to operate a motor
48 vehicle in this state, an order shall be issued denying the person the issuance of
49 a license or permit for a period of one year.

50 4. If a person's license has been revoked because of the person's refusal
51 to submit to a chemical test, such person may petition for a hearing before a
52 circuit or associate circuit court in the county in which the arrest or stop
53 occurred. The person may request such court to issue an order staying the
54 revocation until such time as the petition for review can be heard. If the court,
55 in its discretion, grants such stay, it shall enter the order upon a form prescribed
56 by the director of revenue and shall send a copy of such order to the
57 director. Such order shall serve as proof of the privilege to operate a motor
58 vehicle in this state and the director shall maintain possession of the person's
59 license to operate a motor vehicle until termination of any revocation pursuant
60 to this section. Upon the person's request the clerk of the court shall notify the
61 [prosecuting attorney of the county and the prosecutor shall appear at the
62 hearing on behalf of the director of revenue] **director**. At the hearing the court
63 shall determine only:

64 (1) Whether or not the person was arrested or stopped;

65 (2) Whether or not the officer had:

66 (a) Reasonable grounds to believe that the person was driving a motor
67 vehicle while in an intoxicated or drugged condition; or

68 (b) Reasonable grounds to believe that the person stopped, being under
69 the age of twenty-one years, was driving a motor vehicle with a blood alcohol
70 content of two-hundredths of one percent or more by weight; or

71 (c) Reasonable grounds to believe that the person stopped, being under the
72 age of twenty-one years, was committing a violation of the traffic laws of the
73 state, or political subdivision of the state, and such officer had reasonable

74 grounds to believe, after making such stop, that the person had a blood alcohol
75 content of two-hundredths of one percent or greater; and

76 (3) Whether or not the person refused to submit to the test.

77 5. If the court determines any issue not to be in the affirmative, the court
78 shall order the director to reinstate the license or permit to drive.

79 6. Requests for review as provided in this section shall go to the head of
80 the docket of the court wherein filed.

81 7. No person who has had a license to operate a motor vehicle suspended
82 or revoked pursuant to the provisions of this section shall have that license
83 reinstated until such person has participated in and successfully completed a
84 substance abuse traffic offender program defined in section 577.001, or a program
85 determined to be comparable by the department of mental health or the
86 court. Assignment recommendations, based upon the needs assessment as
87 described in subdivision (22) of section 302.010, RSMo, shall be delivered in
88 writing to the person with written notice that the person is entitled to have such
89 assignment recommendations reviewed by the court if the person objects to the
90 recommendations. The person may file a motion in the associate division of the
91 circuit court of the county in which such assignment was given, on a printed form
92 provided by the state courts administrator, to have the court hear and determine
93 such motion pursuant to the provisions of chapter 517, RSMo. The motion shall
94 name the person or entity making the needs assessment as the respondent and
95 a copy of the motion shall be served upon the respondent in any manner allowed
96 by law. Upon hearing the motion, the court may modify or waive any assignment
97 recommendation that the court determines to be unwarranted based upon a
98 review of the needs assessment, the person's driving record, the circumstances
99 surrounding the offense, and the likelihood of the person committing a like
100 offense in the future, except that the court may modify but may not waive the
101 assignment to an education or rehabilitation program of a person determined to
102 be a prior or persistent offender as defined in section 577.023, or of a person
103 determined to have operated a motor vehicle with fifteen-hundredths of one
104 percent or more by weight in such person's blood. Compliance with the court
105 determination of the motion shall satisfy the provisions of this section for the
106 purpose of reinstating such person's license to operate a motor vehicle. The
107 respondent's personal appearance at any hearing conducted pursuant to this
108 subsection shall not be necessary unless directed by the court.

109 8. The fees for the substance abuse traffic offender program, or a portion

110 thereof to be determined by the division of alcohol and drug abuse of the
111 department of mental health, shall be paid by the person enrolled in the
112 program. Any person who is enrolled in the program shall pay, in addition to any
113 fee charged for the program, a supplemental fee to be determined by the
114 department of mental health for the purposes of funding the substance abuse
115 traffic offender program defined in section 302.010, RSMo, and section
116 577.001. The administrator of the program shall remit to the division of alcohol
117 and drug abuse of the department of mental health on or before the fifteenth day
118 of each month the supplemental fee for all persons enrolled in the program, less
119 two percent for administrative costs. Interest shall be charged on any unpaid
120 balance of the supplemental fees due the division of alcohol and drug abuse
121 pursuant to this section and shall accrue at a rate not to exceed the annual rates
122 established pursuant to the provisions of section 32.065, RSMo, plus three
123 percentage points. The supplemental fees and any interest received by the
124 department of mental health pursuant to this section shall be deposited in the
125 mental health earnings fund which is created in section 630.053, RSMo.

126 9. Any administrator who fails to remit to the division of alcohol and drug
127 abuse of the department of mental health the supplemental fees and interest for
128 all persons enrolled in the program pursuant to this section shall be subject to a
129 penalty equal to the amount of interest accrued on the supplemental fees due the
130 division pursuant to this section. If the supplemental fees, interest, and penalties
131 are not remitted to the division of alcohol and drug abuse of the department of
132 mental health within six months of the due date, the attorney general of the state
133 of Missouri shall initiate appropriate action of the collection of said fees and
134 interest accrued. The court shall assess attorney fees and court costs against any
135 delinquent program.

 [229.110. 1. Every person owning a hedge fence situated
2 along or near the right-of-way of any public road shall between the
3 first days of May and August of each year cut the same down to a
4 height of not more than five feet, and any owner of such fence
5 failing to comply with this section shall forfeit and pay to the
6 capital school fund of the county wherein such fence is situated not
7 less than fifty nor more than five hundred dollars, to be recovered
8 in a civil action in the name of the county upon the relation of the
9 prosecuting attorney, and any judgment of forfeiture obtained shall
10 be a lien upon the real estate of the owner of such fence upon

11 which same is situated, and a special execution shall issue against
12 said real estate and no exemption shall be allowed.

13 2. Any prosecuting attorney who shall fail or refuse to
14 institute suit as herein provided within thirty days after being
15 notified by any road overseer, county or state highway engineer,
16 that any hedge fence has not been cut down to the height herein
17 required within the time required, shall be removed from office by
18 the governor and some other person appointed to fill the vacancy
19 thus created. The cutting of any such fence after the time herein
20 required shall not be a defense to the action herein provided for.]

 [550.050. 1. Every person who shall institute any
2 prosecution to recover a fine, penalty or forfeiture shall be
3 adjudged to pay all costs if the defendant is acquitted although he
4 may not be entitled to any part of the same.

5 2. When such prosecutions are commenced by a public
6 officer whose duty it is to institute the same, and the defendant is
7 acquitted, the county shall pay the costs; if he is convicted, and
8 unable to pay the costs, the county shall pay all the costs, except
9 such as were incurred on the part of the defendant.]

 [550.070. If a person, charged with a felony, shall be
2 discharged by the officer taking his examination, the costs shall be
3 paid by the prosecutor or person on whose oath the prosecution was
4 instituted, and the officer taking such examination shall enter
5 judgment against such person for the same, and issue execution
6 therefor immediately; and in no such case shall the state or county
7 pay the costs.]

 [550.080. If, upon the trial of any indictment or
2 information, the defendant shall be acquitted or discharged, and
3 the prosecutor or prosecuting witness shall be liable to pay the
4 costs according to law, judgment shall be rendered against such
5 prosecutor for the costs in the case, and in no such case shall the
6 same be paid by either the county or state.]

 [550.090. When the proceedings are prosecuted before any
2 associate circuit judge, at the instance of the injured party, for the
3 disturbance of the peace of a person, or for libel or slander, or for
4 any trespass against the person or property of another, not

5 amounting to a felony, except for petit larceny, the name of such
6 injured party shall be entered by the associate circuit judge on his
7 record as a prosecutor; and if the defendant shall be discharged or
8 acquitted, such prosecutor shall be adjudged to pay the costs not
9 otherwise adjudged; and in every other case of acquittal, if the
10 associate circuit judge or jury trying the case shall state in the
11 finding that the prosecution was malicious or without probable
12 cause, the associate circuit judge shall enter judgment for costs
13 against the prosecution or party at whose instance the information
14 was filed, and shall issue execution therefor; but in no case shall
15 the prosecuting attorney be liable for costs. In other cases of
16 discharge or acquittal the costs shall be paid by the county, except
17 when the prosecution is commenced by complaint and the
18 prosecuting attorney declines to file information thereon, in which
19 case the proceedings shall be dismissed at the cost of the party
20 filing the complaint.]

Bill ✓

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